

**REMARKS**

Claims 56-58, 61-67, 69-73 and 78-80 are all the claims pending in the application.

**I. Claim Rejections Under 35 U.S.C. § 102**

The Examiner rejected claims 66 and 79 under 35 U.S.C. § 102(b) as allegedly being anticipated by Chamoun (US Patent No. 5,320,109).

**Claim 79**

The Applicant respectfully disagrees, and submits that Chamoun fails to teach each and every element of claim 79, as required for a rejection under 35 U.S.C. § 102(b). Specifically, Chamoun fails to disclose “determining whether the being is entering or leaving consciousness,” as recited in claim 79. Chamoun, at most, discloses only determining a single level of consciousness, which does not help determine whether a being is *entering* or *leaving* consciousness. By determining whether a being is entering or leaving consciousness, the invention embodied in claim 79 determines the transition from consciousness to unconsciousness (and vice versa); essentially determining a vector for consciousness. This vector is determined by determining a first index of consciousness and a second index of consciousness, where the second index of consciousness is derived from the evoked potential response signal.

Chamoun similarly fails to specifically disclose the determination of a first index of consciousness and a second index of consciousness, as Chamoun makes only a passing reference to producing “diagnostic indices,” without any mention of the multiple indices both being related to consciousness, or how the indices could be used to determine whether a being is entering or leaving consciousness, as recited in claim 79.

Additionally, Chamoun does not teach where a second index of consciousness is derived from the at least one evoked potential response signal, while the first index of consciousness is

derived from the first continuous biosignal, as recited in claim 79. In fact, Chamoun appears to be silent as to how the diagnostic indices are specifically derived.

For at least the reasons stated above, the Applicant believes that Chamoun fails to anticipate each and every element of claim 79, as required for a rejection under 35 U.S.C. § 102(b). Therefore, the Applicant respectfully requests that the rejection of claim 79 be withdrawn.

**Claim 66**

The Applicant additionally submits that claim 66 is allowable at least based on its dependency to claim 79. Further, the Applicant submits that Chamoun fails to disclose acquiring a biosignal “using an electrode sensor *activatable in response to pressure* from an operator or user of an apparatus performing said method,” as recited in claim 66 (emphasis added). The Examiner cites to col. 3, lines 30-32, as teaching the elements of claim 66. However, the cited section simply describes the use of a “suitable electrode” and makes no specific mention of an electrode that activates in response to pressure.

For at least the reasons stated above, the Applicant believes that Chamoun fails to anticipate each and every element of claim 66 as required for a rejection under 35 U.S.C. § 102(b). Therefore, the Applicant respectfully requests that the rejection of claim 79 be withdrawn.

**II. Claim Rejections Under 35 U.S.C. § 103**

The Examiner rejected claim 62 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chamoun in view of Ennen (US Patent No. 6,317,627).

The Applicant submits that claim 62 is allowable at least based on its dependency to claim 79, and requests that the rejection of claim 62 under 35 U.S.C. § 103(a) be withdrawn.

### **III. Allowable Subject Matter**

The Applicant thanks the Examiner for the indication of allowable subject matter for claims 56-58, 61, 63-65, 67, 69-73, 78 and 80.

### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Date: October 10, 2008